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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4098 OF 2006

Sameer Kumar Prakash Awsare .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.A.S.Khandeparkar for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th December 2006

P.C.

. Applicant is the original accused No.1 in C.R.No.74 of 2006 registered with Rajapur Police Station alleging offences punishable under

section 302, 301 and 34 I.P.C.

2. Applicant has been arrested on 24th July 2006 and is presently in judicial custody.

3. Applicant original accused No.1 and one Sagar Kamble original accused No.2, jointly applied for bail in the Court of Sessions Judge, Ratnagiri. Application of the co-accused Sagar has been allowed while that of applicant is rejected.

4. Mr.Khandeparkar appearing for applicant contended that the entire judgement of the trial court would reveal that the incident which occurred resulting in the death of the deceased Deepak involved both applicants. It cannot be said at this stage that the applicant before this Court and the original accused No.2 cannot be granted relief on the same reasoning. Once the prosecution claimed that the accused No.2 Sagar assisted the applicant in killing the deceased

and, thereafter, destroying the dead body, then, according to Mr.Khandeparkar, the applicant also deserve to be granted relief.

5. The alleged distinction made viz., that of the extra judicial confession and recovery of incriminating articles does not mean that the application cannot be allowed on the ground of parity.

6. Mr.Pednekar states that in the present case the accused are guilty of serious offence. Role of the present applicant is the main role in the crime. There are recoveries of incriminating articles so also there is extra judicial confession. Evidentiary value of the materials cannot be gone into at this stage. Therefore, the learned Additional Sessions Judge was right in his conclusion.

7. I have perused the application and the annexures thereto. Learned Sessions Judge in

para 36 of the order has discussed the role of both accused and the recovery. He has also considered the extra judicial confession. Once, the only distinction that is sought to be made is the extra judicial confession of the present applicant, then, there is substance in the contention of Mr.Khandeparkar that relief to the applicant has been denied only on the ground of alleged apprehension expressed by the prosecution. Once the Nylon rope is recovered from Accused No.2 and only incriminating articles recovered from the applicant are Umbrella and Chappal of deceased, then relief could not have been granted to only one accused thereby denying the same to the applicant. While it is true that there is extra judicial confession, admissibility of which cannot be gone into at this stage but it appears that the learned Judge was greatly influenced by the fact that the parties are from the same village and there is likelihood that the applicant will tamper with the prosecution witnesses and threaten them as well. That aspect

can be taken care of by imposing strict conditions and Mr.Khandeparkar states that the applicant is agreeable to stay outside Rajapur Taluka. Hence, following order would meet the ends of justice:-

i) The applicant arrested in connection with C.R.No.74 of 2006 registered with Rajapur Police Station shall be enlarged on bail in the sum of Rs.15,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant shall not reside in Rajapur taluka and will enter the same only for the purpose of attending trial. The applicant will remain present before the Lanja police station once a week on every Saturday between 5.00 p.m. and 7.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any

attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)